

ORIGINAL

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FILED
Clerk
District Court

APR - 7 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

5 Attorneys for Defendant Todd Keith Johnson

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN MARIANA ISLANDS

8 ALAN STUART MARKOFF, D.D.S. dba) CIVIL ACTION NO. CV-05-0035
9 TOOTHWORKS and OPEN CHOICE,)

10 Plaintiff,

11 vs.

12 TODD KEITH JOHNSON, D.D.S.,

13 Defendant.

) DECLARATION OF DAVID G. BANES
) IN FURTHER SUPPORT OF
) MEMORANDUM OF LAW OF
) A MOTION TO STAY

) Date : Munson, Chief Judge
) Time : April 13, 2006
) Judge : 9:00 a.m.
)

14
15 I, David G. Banes, declare under the penalty of perjury that following is true and based
16 on my personal knowledge.

17
18 1. I attach as Exhibit A what I have been told is a true and accurate copy of Dr.
19 Markoff's responses to Dr. Johnson's discovery requests in the Texas County case. In that
20 document Dr. Markoff lists the following persons as witnesses:

- 21 a. Todd Johnson, Texas
22 b. Alan Markoff, Saipan
23 c. Jane Seibert, Oregon
24 d. Angie Mamaril, unknown
25 e. James Peters, Esq., Oklahoma
f. David Washburn, Esq., (Texas)

2. I attach as Exhibit B what I have been told is a true and accurate copy of an affidavit by Dr. Markoff filed in the Texas County matter. In that affidavit Dr. Markoff admits he consulted with Million Dollar Dental Practices (Oregon) and Progressive Management Consultants (Illinois).

3. Plaintiff listed Marcie Tomokane of Bank of Guam as having knowledge of this matter in his Initial Disclosures. Since the Bank is one of our clients and Ms. Tomokane is a friend of mine, I called her and asked her what if anything she knew about this case or Toothworks in general. She said no one had contacted her about being listed as a witness and off the top of her head, she had no knowledge about Toothworks, just a passing familiarity with the parties and did not know anything about the litigation, or words to that effect.

Dated this 7th of April, 2006.

OR

David G. Banes

EXHIBIT

A

AHMAD, ZAVITSANOS & ANAIPAKOS, P.C.

ATTORNEYS AT LAW
3460 ONE HOUSTON CENTER
1221 MCKINNEY STREET
HOUSTON, TEXAS 77010-2009

APRIL D. MCCART
LEGAL ASSISTANT TO
AMIR ALAVI
amccar@azalaw.com
Extension 141

RECEIVED

TELEPHONE: (713) 655-1101
TELECOPIER: (713) 655-0062

MAR 17 2006

March 16, 2006

EFG JAN D AMM
FILTEAU & SULLIVAN, P.C.

Robert J. Filteau
Attorney at Law
1634 Columbia Street
Houston, Texas 77008

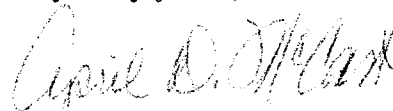
*Via Certified Mail
Return Receipt Requested*

Re: Cause 2005-56947; *Todd Keith Johnson, DD. v. Alan Stuart Markoff, DDS, Inc., et al.*; In The 281st Judicial District Court of Harris County, Texas

Dear Mr. Filteau:

Enclosed please find Defendants' Response to Plaintiff's Request for Disclosure in the above-captioned matter.

Very truly yours,



April D. McCart

/adm
Enclosure

cc: Amir H. Alavi [Firm w/o enclosure]
Ariadne M. de Gennaro [Firm w/o enclosure]
Alan S. Markoff

Via First Class Mail

CAUSE NO. 2005-56947

TODD KEITH JOHNSON, D.D.S	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs.	§	OF HARRIS COUNTY, TEXAS
	§	
ALAN STUART MARKOFF, DDS, INC,	§	
ALAN STUART MARKOFF, and	§	
ALAN STUART MARKOFF D.D.S	§	
d/b/a TOOTHWORKS - OPEN CHOICE	§	
	§	
Defendant.	§	281ST JUDICIAL DISTRICT

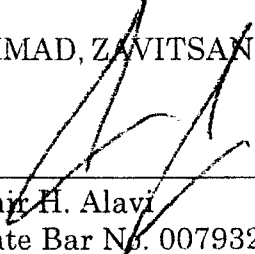
**DEFENDANTS' RESPONSE TO
PLAINTIFF'S REQUEST FOR DISCLOSURE**

To: Plaintiff Todd Keith Johnson, D.D.S and his attorney of record, Robert J. Filteau, Attorney at Law, 1634 Columbia Street, Houston, Texas 77008.

COMES NOW, Defendants Alan Stuart Markoff, DDS, Inc., Alan Stuart Markoff, and Alan Stuart Markoff, D.D.S. d/b/a Toothworks - Open Choice ("Defendants") in the above-entitled and numbered cause, and files these Responses pursuant to your request and Rule 194 of the Texas Rules of Civil Procedure. Plaintiff discloses the information and materials described in Rule 194.2.

Respectfully submitted,

AHMAD, ZAVITSANOS & ANAIPAKOS, P.C.



Amir H. Alavi
State Bar No. 00793239
Ariadne Montare de Gennaro
State Bar No. 24050492
1221 McKinney Street
Houston, Texas 77010
Telephone: (713) 655-1101
Telecopier: (713) 655-0062

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of March, 2006, a true and correct copy of the above and foregoing document was sent by certified mail, return receipt requested, to the counsel of record as follows:

Robert J. Filteau
Attorney at Law
1634 Columbia Street
Houston, Texas 77008



Amir H. Alavi

(a) the correct names of the parties to the lawsuit;

Plaintiff: Todd Keith Johnson, DDS

Defendant: Defendants deny that they have been properly sued, but identify the following correct names of the defendant parties:

Alan Stuart Markoff, DDS, Inc.
Alan Stuart Markoff

(b) the name, address, and telephone number of any potential parties;

Todd Keith Johnson, individually
13901 N.E. 8th
Choctow, Oklahoma 73020
telephone number unknown

(c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);

• Defendants generally deny the allegations in Plaintiff's latest petition. In addition, Plaintiff has misnamed one of the defendants. The entity Plaintiff named as "Alan Stuart Markoff, D.D.S. d/b/a Toothworks - Open Choice" does not exist. Presumably, Plaintiff was attempting to name Alan Stuart Markoff DDS, Inc. twice.

Plaintiff's claims are also barred by the affirmative defenses of (1) complete or partial failure of consideration and (2) fraud. Specifically, Plaintiff made material misrepresentations of fact concerning the amount of revenue that was produced by the dental practice. Defendant, Alan Stuart Markoff DDS, Inc., reasonably relied on such false representations to its detriment. As a result of such reliance, Defendant agreed to a price for the practice that was premised on the false revenue numbers when in reality, the price for the practice should have been lower to reflect the lower revenue numbers of the practice.

(d) the amount and any method of calculating economic damages;

N/A

(e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

Corporate representative and custodian of documents
Todd Keith Johnson, D.D.S.
c/o Robert J. Filteau
Filteau & Sullivan, P.C.
1634 Columbia Street
Houston, Texas 77008
(713)236-1400
Plaintiff

Todd Keith Johnson
c/o Robert J. Filteau
Filteau & Sullivan, P.C.
1634 Columbia Street
Houston, Texas 77008
(713)236-1400
Principal of Plaintiff

Alan Stuart Markoff
PO Box 504699
Saipan MP 96950
(670) 234-3810
Defendant

Alan Stuart Markoff, DDS, Inc.
PO Box 504699
Saipan MP 96950
(670) 234-3810
Defendant

Jane Seibert
Last known address
PO Box 880
Gleneden Beach, Oregon
(541) 764-5580
*Broker for Million Dollar Dental Practices who assisted
Plaintiff in sale of dental practice*

Angie Mameril
address and telephone unknown
*Former employee of Plaintiff who prepared accounting records
for Plaintiff*

James M. Peters
Monnet, Hayes, Bullis, Thompson & Edwards
120 North Robinson, Suite 1719
Oklahoma City, Oklahoma 73102
telephone number unknown
Attorney for Plaintiff in sale of dental practice

David M. Washburn
Nathan Sommers Jacobs + Gorman
2800 Post Oak Boulevard, 61st Floor
Houston, Texas 77056
713-892-4813
*Attorney for Alan Stuart Markoff, DDS, Inc. in purchase
of dental practice*

(f) for any testifying expert:

- (1) the expert's name, address, and telephone number;**
- (2) the subject matter on which the expert will testify;**
- (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;**
- (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:**
 - (a) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and**
 - (b) the expert's current resume and bibliography;**

Defendants have not yet made determinations as to testifying experts but will supplement in accordance with Rule 195.2 of the Texas Rules of Civil Procedure.

- (g) any discoverable indemnity and insuring agreements;

None.

- (h) any discoverable settlement agreements;

None.

- (i) any discoverable witness statements;

None.

- (j) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;

N/A

- (k) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by requesting party.

N/A

EXHIBIT B

CAUSE NO. 2005-56947

TODD KEITH JOHNSON, DD.	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
vs,	§	
	§	
ALAN STUART MARKOFF, DDS, INC.,	§	OF HARRIS COUNTY, TEXAS
ALAN STUART MARKOFF, and	§	
ALAN STUART MARKOFF D.D.S	§	
D/B/A TOOTHWORKS - OPEN	§	
CHOICE	§	
Defendants.	§	281 ST JUDICIAL DISTRICT

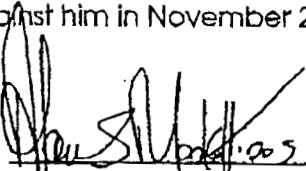
AFFIDAVIT OF ALAN STUART MARKOFF

Before me, the undersigned authority, came on to be heard Alan Stuart Markoff, who, being duly sworn by me, stated the following:

1. "My name is Alan Stuart Markoff. I am of sound mind, over the age of eighteen, and am fully capable and competent to make the statements found in this affidavit, which, on my personal knowledge, are true and correct.
2. "I purchased a dental clinic (Toothworks) and dental insurance company (Open Choice) from Dr. Todd Johnson on or about September 24, 2004.
3. "The dental practice operates at Saipan Health Clinic, Chalan Kiya, Saipan 96950, Commonwealth of the Northern Mariana Islands ("CNMI"). It has no other locations. At the time of its sale, it was owned and operated by Todd Johnson, who was then a resident of Saipan.
4. "At the time of the transaction, I was a resident of Houston. In December 2004, I moved to Saipan to take over running the practice. I have lived and worked there continuously since December 2004.
5. "At the time this action was filed, I was living full-time in Saipan. I continue to live there full-time.
6. "I am in the process of selling my former residence here in Houston. In 2005, I spent less than two months in Texas. My professional corporation, Defendant Alan Stuart Markoff DDS, Inc., has not done any business in Harris County since I relocated to Saipan.

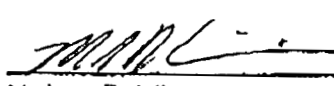
7. "I traveled to Texas twice in 2005, from April 19 to May 27, and from Sept. 28 to Oct. 20. I was in Texas for a total of 58 days in 2005. Both of these trips were unrelated to the operation of the dental practice.
8. "Although I am registered to vote in Texas, I did not vote in the 2004 or 2005 elections.
9. "Since relocating to Saipan, I have been living in a leased apartment with an option to renew. I have purchased two cars in Saipan for my personal and business use.
10. "I am licensed to practice dentistry in the CNMI. I am a member of the Saipan Chamber of Commerce. I do not own any other businesses except for the dental practice in Saipan.
11. "In conjunction with the sale of the practice, I consulted with Doug Seibert, the principal of a firm in Oregon called Million Dollar Dental Practice, which served as a broker for the sale. Upon information and belief, Mr. Seibert, a resident of Oregon, has suffered several strokes, is incapacitated, and is not expected to recover. Because of his condition, I will not be calling Mr. Seibert as a witness in this action or the Federal Action.
12. "I also consulted with Progressive Management Consultants, a broker that is based in Illinois. Upon information and belief, the persons at Progressive with knowledge of the transaction reside in Illinois and are not residents of Harris County.
13. "Should this court grant the motion to dismiss, I am willing to have my corporation submit to the jurisdiction of the federal court in Saipan should Johnson choose to bring suit there or seek joinder in the Federal Action that I filed against him in November 2005."

Further Affiant sayeth not.


Alan Stuart Markoff

Sworn to and subscribed before me on this 4th day of April, 2006.




Notary Public

MARK K. WILLIAMS
Commonwealth of the Northern Mariana Islands
My Commission expires on the
17 day of October 2007